

UNITED STATES TAX COURT
WASHINGTON, DC 20217

EUGENIO ESPINOZA MARTINEZ,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 29472-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER

This case was on the Court's October 27, 2014 trial calendar for San Antonio, Texas. The petitioner, Mr. Martinez, did not appear and moved for a continuance. (His nonappearance is understandable -- he pled guilty to aggravated assault causing serious bodily injury and tampering with physical evidence, crimes that will leave him an inmate in the Texas State prison system for the next decade.) *Martinez v. State*, No. 13-12-00541-CR, 2012 WL 5188037 (Tex. App. Oct. 18, 2012). The IRS moved under Tax Court Rule 91(f) for an order to show cause why facts should not be treated as established. This kind of motion lets the IRS put together the evidence it has in a case. Then the Tax Court can give the taxpayer a chance to review it and be very specific about what he disagrees about and what he does not disagree about. This very often helps the case get decided without a trial, which is difficult or impossible when a taxpayer is in prison. The Court ordered Mr. Martinez to be re-served with the Commissioner's 91(f) motion and gave him till March 12, 2015 to respond.

Mr. Martinez did not respond in the usual manner, but instead claimed that all his records had been seized by the warden. This prompted the Court to examine the entire record in the case so far, and it has now concluded that Mr. Martinez's

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responses to the IRS's proposed stipulation are evasive. *See* Tax Court Rule 91(f)(3).

Here's what the record shows:

Mr. Martinez filed this case in December 2012 to challenge a notice of deficiency that determined he understated his taxes for 2009 and 2010 by a little more than \$5,000.

In February 2013 Mr. Martinez asked for an indefinite extension of time to reply to the Commissioner's answer because "all of his records are nowhere to be found" and -- because of his incarceration -- he had to work with family members via correspondence.

In April 2013 he asked for an indefinite stay of proceedings because he had been admitted to a mental health unit and would not be able to regain access to his "legal documents . . . until he returns to his unit of assignment." Although the Commissioner pointed out, quite accurately, that Mr. Martinez didn't attach any documentation to this motion to support his assertions, we granted the stay until September 2013. We also advised him of the Court's practice of recognizing someone on the outside as a representative, guardian, or "next friend." The Commissioner likewise reminded Mr. Martinez that he could give someone a power of attorney to try to negotiate a settlement with the IRS.

In January 2014 he wrote the Court and again asked for an indefinite stay. He explained that he was now out of the mental health unit, but was in divorce proceedings with his wife. Since the IRS sent the notice of deficiency to Mr. Martinez alone, we denied his request and put the case back on the general docket.

Less than two weeks before the calendar call Mr. Martinez moved for another stay of proceedings on the ground that his mother had died. He again attached no proof of this, but the Court granted his motion at calendar call.

Stymied at the lack of progress, the Court extended the time for Mr. Martinez to answer the Commissioner's Rule 91(f) motion. He did so, not in the

usual manner, but by saying that his late mother had the records and his power of attorney, and that with her death those records are again “nowhere to be found.” He simultaneously filed a motion stating that all his records were seized by the guards, including “legal documents in the form of affidavits, receipts, and other documents used to support Petitioner’s claims as it regards this tax dispute” that his mother “made diligent and painstaking efforts to obtain.”

In sum, the records necessary to decide this case on the merits were either (a) nowhere to be found; (b) waiting for him when he returned to his unit of assignment when he was released from a mental health unit; (c) lost when his mother died; and (d) seized by guards from his cell.

Still, the Court has never received any documentation for any of the assertions that Mr. Martinez has ever made in any of his filings -- including the supposed appointment of his mother as his power of attorney. We recognized the difficulties that prisoners can have in disposing of tax litigation while incarcerated, but stressed to Mr. Martinez that we must move this case forward. We gave him one more chance to respond to the Commissioner’s 91(f) motion.

Mr. Martinez filed his response earlier this summer. Rule 91(f)(2) requires that the

response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. . . . Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose.

Mr. Martinez did not do this. Instead of specifically listing which proposed stipulations he agrees with and which he disputes, he complains about the inadequate tax-law resources of the law library where he is imprisoned. He asserts that he cannot obtain the documents he needs from third parties due to his incarceration, which contradicts his earlier assertions that his records were in the possession of his mother or others outside prison who could have helped him. He now says in his response that his mother had at least a few records but he does not even describe what they were. He attaches grievance forms and correspondence

that shows he tried to get *pro bono* representation. But he does not respond to the actual proposed stipulations that the IRS drafted.

Rule 91(f)(4) directs us to be careful not to determine a “genuinely controverted or doubtful issue of fact” before trial. But here Mr. Martinez does not actually controvert any of the only 10 proposed stipulations that the IRS proposes. It is therefore

ORDERED that respondent’s proposed stipulation of facts that is attached as Exhibit A to his motion under Rule 91(f) are accepted as established. It is also

ORDERED that on or before December 8, 2015 respondent move for summary judgment on the basis of the stipulated facts, or file a status report describing any progress toward settlement.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
September 8, 2015